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## ARIZONA ATTORNEY GENERAL

October 11, 1954  
Opinion No.  
54-152

TO: Mr. Edwin C. Gracey, Supervisor  
Trade and Industrial and Distributive  
Education  
Department of Vocational Education  
400 Arizona State Building  
Phoenix, Arizona

RE: Firemen's Relief and Pension Fund

QUESTIONS: (1) In the case of a part-time  
fireman is this type of fireman  
entitled to pension coverage under  
existing Arizona law?

(2) May the members of a fire  
department Board of Trustees set the  
amount a fireman eligible for pension  
may receive up to one half of his  
salary or must he be given one half  
of his salary as stated in the  
Firemen's Pension Law?

In answer to question No. 1, article 19, Chapter 16, A.C.A. 1939, and the amendments thereto concern the Firemen's Relief and Pension Fund, its source, accumulation, and disbursement. This fund is designed to provide a pension for those firemen who retire for length of service, for those firemen who retire due to a disability incurred in the performance of duty, for the dependents who survive a fireman who loses his life in the performance of duty, and for temporary relief and assistance to a volunteer fireman or his dependents. A part-time fireman is excluded from receiving any portion of the fund as a pension for retirement due to length of service by the provisions of Section 16-1904, A.C.A. 1939, as amended, 1953 Supplement, which limits such a pension to full-time employees. However, Section 16-1920, A.C.A. 1939, as amended, 1952 Cumulative Supplement, does provide for a pension to volunteer firemen. This section does not differentiate between full-time and part-time members of a volunteer fire company in granting discretionary power to the Board of Trustees to make disbursements from the fund to such firemen.

(ARS 9-961)

"16-1920. <sup>1</sup> Pension for volunteer firemen.--Any person duly appointed and having served as a member of a legally organized volunteer fire company for twenty-five (25) years or more, or who has reached the age of sixty (60) years and served twenty (20) years, may, at the discretion of the board of trustees, be paid a monthly pension not to exceed fifty dollars (\$50) per month, to be paid from the firemen's relief and pension fund for his volunteer fire company."

We conclude that it is within the power of the Board of Trustees to grant a pension for retirement for length of service in accordance with the terms of this section.

Section 16-1905, A.C.A. 1939, as amended, 1953 Supplement, provides for the retirement of a part-time employee of a legally organized volunteer fire company for the reason of a disability incurred in the course of his service. This section states as follows:

(ARS 9-959)

"16-1905. <sup>1</sup> Retirement of firemen for disability.  
--(a) A person duly appointed and serving in the fire department of an incorporated city or town, or a legally organized volunteer fire company, on becoming physically or mentally disabled through performance of his duties in the course of his service as a fireman, if his disabilities do not entitle him to compensation under the workmen's compensation laws, shall be retired on a monthly pension to be paid from the firemen's relief and pension fund for such period as the board of trustees deem proper and in the following amounts:

1. If at the time of his becoming so disabled, he was serving as a full time paid member of his fire department, he shall be paid during his retirement for disability a monthly pension equal to one-half the average monthly salary received by him during the five year period next prior to his retirement, or for the period of his employment if he had been employed for less than five years, but not to exceed two hundred fifty dollars per month.

2. If at the time of becoming so disabled, he was serving as a duly appointed member of a volunteer fire company, but not as a full time member, he shall be paid during his retirement for disability a pension of not more than sixty dollars a month.

(b) If the disability ceases, the pension shall be terminated and the beneficiary returned to active service at a salary not less than that received by him immediately prior to his retirement. If the disability is shown to be permanent, or if the fireman becomes eligible for retirement under the provisions of section 16-1904 during the period of his disability, he may, in the discretion of the board, be allowed the pension provided in section 16-1904." (Emphasis Supplied)

It is also the opinion of this office that in the event of a fireman-employee, being a legally organized volunteer fireman on a part-time basis, dying in the performance of his duty, his widow and children, if any, will be entitled to payments from the fund in accordance with the terms of 16-1903, A.C.A. 1939, as amended, 1953 Supplement. This section provides as follows:

(ARS 9-962)  
"16-1903. Loss of life in performance of duty.

--(a) When a person duly appointed and serving in the fire department of an incorporated city or town, or in a legally organized volunteer fire company, dies as a result of an accident or illness caused by or sustained in the performance of his duties in such service, leaving a dependent, and the circumstances of his death not such as to entitle the dependent to compensation under the workmen's compensation law, there shall be paid from the firemen's relief and pension fund to his dependents the following:

1. If he leaves a widow, an amount equal to one-third of his monthly salary, plus an amount not exceeding twenty-five dollars a month for each dependent child under eighteen years of age, shall be paid to the widow until she remarries.

2. If he leaves a dependent child under the age of eighteen years, but no surviving widow, the sum of fifty dollars a month for each child shall be paid to its guardian until the child reaches the age of eighteen years.

(b) Dependents entitled to receive payment under the provisions of this section 16-1903, shall in no event be paid more than one-half the average monthly salary of the deceased immediately prior to his death. 'Average monthly salary' shall be deemed to be the average monthly salary for the period of five years next prior to the termination of his service, or for the period of

his service if less than five years. Payments hereunder shall in no event exceed the sum of two hundred fifty dollars per month."

There being no expressed or implied exclusion of the duly appointed firemen who serves on a part-time basis from the purview of this section it is presumed that the intent here is to include a part-time member of a volunteer fire company whose life is lost in line of duty. It will be noted that limits upon the amount of benefits disbursed in this section are contained in Subsection (b) of Section 16-1908, supra.

A further statutory provision relating to benefits derived from the Firemen's Relief and Pension Fund is Section 16-1908a, A.C.A. 1939, as amended, 1953 Supplement. This section concerns relief and assistance of a temporary nature, providing as follows:

q 913 ARS "16-1908a. Relief and assistance.--The board of trustees is authorized to grant temporary relief and assistance from moneys of the fund to any qualified member of a legally organized volunteer fire company or department, or to his widow or surviving dependents."

Such temporary relief and assistance is limited to a qualified member of a legally organized volunteer fire company. We judge that a duly appointed member of such a fire company is qualified within the meaning of the above-quoted section regardless of whether he serves on a full-time or a part-time basis and is therefore entitled to receive temporary relief and assistance under proper circumstances.

Briefly in summary it is the opinion of this office that a part-time fireman may receive benefits under any of the foregoing sections; namely, 16-1920, 16-1905, 16-1908, and 16-1908a, supra.

In answer to your second question, we consider first the case of a full-time employee--member of a fire department of an incorporated city or town who retires either by virtue of length of service and age or physical disability. Section 16-1904, A.C.A. 1939, as amended, 1953 Supplement, would appear to answer a portion of this question. This section provides as follows:

"16-1904. Retirement for length of service.--  
(a) When any person has served for twenty years in this state as a full time paid member of the same fire department or fire company, and is either fifty-seven years or more of age or becomes while a member of the fire department physically unable in the opinion of the board of trustees to perform the duties of the service, he shall on his application be retired on a

monthly pension equal to one-half the average monthly salary received by him for the five year period next prior to his retirement, to be paid from the firemen's relief and pension fund of his incorporated city or town or organized fire company. The pension shall in no event exceed two hundred fifty dollars (\$250) per month.

(b) In the event a member is severed from the payroll of a fire department or fire company because of compensable injury or illness under the provisions of law governing the industrial commission of Arizona, any time he may have spent off the payroll shall not be a penalty against his retirement for length of service, nor shall such member be required to contribute to the fund during the period of his severance from the payroll. In the event such a member retire, the computation of his pension shall be based on his normal salary, or his payroll classification prior to injury or illness, and not on the compensation awarded him by the industrial commission.

(c) In the event of the death of a person drawing, or eligible to draw, a pension under this section, there may be paid to his surviving dependents the following sums:

1. If he leaves a widow to whom he was married at least one year prior to his retirement, an amount equal to two-thirds of his monthly pension or the monthly pension to which he was eligible, plus an amount not exceeding twenty-five dollars a month for each dependent child of the deceased under eighteen years of age, to the widow until she remarries.

2. If he leaves a dependent child under eighteen years of age, but no surviving widow to whom he was married at least one year prior to his retirement, fifty dollars a month for each child may be paid to its guardian until the child attains the age of eighteen years.

3. Dependents shall not be paid more per month than the amount the pensioner was receiving, or that which the fireman was eligible to receive prior to his death."

It is seen from subsection (a) above that a fireman entitled to benefits under this section shall receive an amount equal to one half of his average monthly salary received for the five year period next to his retirement. This is the compulsory amount to be received by such a fireman from the fund with the express limit of \$250 per month placed as the maximum amount to be paid one person. As stated in subsection (c) above in the event of the death of a fireman who is drawing or eligible to draw a pension under this section at the time of his death, his widow, if she has been his wife for at least one year prior to his retirement, may be paid an amount equal to two thirds of the average monthly pension, plus up to \$25 a month for each dependent child under eighteen years of age. Where no qualified widow survives the fireman, each dependent child becomes entitled to \$50 per month until that child becomes eighteen years of age. The wording of subsection (c) is not a command to the Board of Trustees to disburse the fund but rather imparts discretion to it to make these payments from the fund when the fireman dies. These words vest in the board the discretion to disburse portion of the fund to the named beneficiaries as it sees fit.

With regard to retirement due to a service-incurred-disability as prescribed by Section 16-1905, supra, the Board of Trustees is directed to disburse an amount equal to one half the average monthly salary of the recipient. It is noted that in the instance of a part-time member of a legally organized fire company the Board is directed to pay a pension not to exceed \$60 per month. The amounts paid under Section 16-1905, supra, are paid under direct command to the Board, consequently, the Board must make the payments as dictated. However the monthly payments made to part-time firemen employed in a legally organized volunteer fire company may vary but must not exceed the maximum limit of \$60 per month.

Payments made under the provisions of Section 16-1908, supra, relating to loss of life in performance of duty are to be made as a manner of course by the Board of Trustees with no discretion given it as to the amounts to be paid. The specific amount which may be disbursed to dependents under this section is one half the average monthly salary earned by the deceased immediately preceeding his death with the amount of his pension to in no event exceed \$250 per month.

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